

ENTERED

March 10, 2025

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UPSCALE BUILDERS, INC.,

Plaintiff,

VS.

PHH MORTGAGE CORPORATION,

Defendant.

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CIVIL ACTION NO. 4:23-CV-02939

ORDER

Before the Court are United States Magistrate Judge Yvonne Y. Ho's Memorandum and Recommendation (Doc. #15), Plaintiff Upscale Builders, Inc.'s (the "Plaintiff") Objections (Doc. #16), and Defendant PHH Mortgage Corporation's (the "Defendant") Response (Doc. #17). The Magistrate Judge's findings and conclusions are reviewed de novo. FED. R. CIV. P. 72(b); 28 U.S.C. § 636(b)(1); *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989). Having reviewed the parties' arguments and applicable legal authority, the Court adopts the Memorandum and Recommendation as its Order.

In this case, Plaintiff asserts claims for (1) quiet title, (2) breach of the duty of good faith and fair dealing, and (3) violations of the Texas Property Code. Doc. 1, Ex. 3 at 5–7. On May 2, 2024, Defendant filed a Motion of Judgment on the Pleadings. Doc. #8. Over the next seven months, Plaintiff did not file a response or seek leave to amend its Complaint. In her Memorandum and Recommendation, Judge Ho determined that Plaintiff's Motion for Judgment on the Pleadings should be granted because (1) Plaintiff failed to state a plausible quiet title claim, (2) Plaintiff's common law duty of good faith and fair dealing is barred as a matter of law, and (3) Plaintiff failed

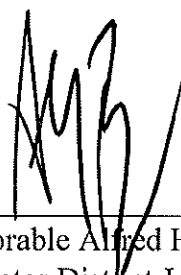
to state a claim under the Texas Property Code. Doc. #15. In its Objections, Plaintiff raises for the first time arguments to rebut Plaintiff's Motion. However, Plaintiff did not present these arguments to Judge Ho. The Fifth Circuit has held that "a party who objects to the magistrate judge's report waives legal arguments not made in the first instance before the magistrate judge." *Freeman v. Cnty. of Bexar*, 142 F.3d 848, 851 (5th Cir. 1998). Accordingly, Plaintiff's objections to the Memorandum and Recommendation are overruled.

In conclusion, the Court adopts the Memorandum and Recommendation (Doc. #15) as its Order. Defendant's Motion for Judgment on the Pleadings (Doc. #8) is hereby GRANTED and Plaintiff's claims are DISMISSED WITH PREJUDICE. Because all claims asserted in this lawsuit have been dismissed, the Court will enter a separate Final Judgment pursuant to Federal Rule of Civil Procedure 58(a).

It is so ORDERED.

MAR 07 2025

Date



The Honorable Alfred H. Bennett
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
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UPSCALE BUILDERS, INC.,

Plaintiff,

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CIVIL ACTION NO. 4:23-CV-02939

FINAL JUDGMENT

The Court has adopted Magistrate Judge Yvonne Y. Ho's Memorandum and Recommendation (Doc. #15) in its entirety. Pursuant to the Court's Order, Defendant is entitled to judgment in its favor. Accordingly, the Court determines that Final Judgment should be entered in this matter and renders this Final Judgment pursuant to Federal Rule of Civil Procedure 58.

Thus, the Court hereby **ORDERS** that Plaintiff's claims are **DISMISSED WITH PREJUDICE**.

THIS IS A FINAL JUDGMENT.

MAR 07 2025

Date



The Honorable Alfred H. Bennett
United States District Judge